IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Appeal No.1572-SB of 2004

Date of Decision: May 08, 2007

Karamjit Singh

...Appellant

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR.JUSTICE RANJIT SINGH

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr.Ashit Malik, Advocate,
for the appellant.

Mr.Parveshinder Singh Sidhu, Addl.A.G.Punjab,
for the State.

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RANJIT SINGH, J.

Junior Engineer serving in Punjab State Electricity Board at Samana is accused of having accepted a bribe of Rs.500/- from one Lal Singh for installing an electric meter at his house. He was accordingly charged under Sections 7 and 13(1)(b) read with Section 13(2) of the Prevention of Corruption Act (hereinafter called the “Act”)

and sentenced to suffer rigorous imprisonment for one year coupled with fine of Rs.1000/- for an offence under Section 7 and rigorous imprisonment for two years with fine of Rs.1000/- upon his conviction for an offence under Section 13(1)(d) read with Section 13(2) of the Act. In default of payment of fine, the appellant was further required to undergo two months rigorous imprisonment on each count.

On 1.8.2001, Lal Singh made a statement before the police disclosing that he had applied for electric connection at his house in village Kakrala through an application dated 23.5.2001. He deposited a sum of Rs.780/- as security and had further deposited a sum of Rs.570/- on receipt of the demand notice. Electric meter was purchased and thereafter handed over to the appellant, working as Junior Engineer at Samana. This meter was not installed despite repeated requests by the complainant to the appellant and when he went to make request in this regard on 30.7.2001, the appellant demanded illegal gratification of Rs.1000/-. After some haggling, the appellant agreed to payment of Rs.500/-. The complainant thereafter went to the office of Vigilance Bureau to arrange a trap. The complainant handed over five currency notes of Rs.100/- denomination to DSP Narinder Pal Kaushal, who noted down their numbers. Usual procedure for treating the notes with phenolphthalein powder and issue of necessary instructions to the complainant to hand over these tainted notes to the appellant on demand in the presence of a shadow witness etc. were conveyed to the complainant. Dr.Vijay Kataria and Dial Singh Inspector Grade-II of Food and Civil Supply, Patiala were joined as independent witnesses along with the Vigilance party and they proceeded to lay a trap as per

the plans. The complainant along with the shadow witness entered the office of P.S.E.B. at Samana with the Vigilance party standing outside the premises. Shadow witness Kala Singh, as per the pre-arranged plan, flashed the signal, whereupon the police entered the room of the appellant. He was nabbed. A glass of water was fetched and soda meant for washing was mixed into. Thereafter a cloth was dipped in it to find that colour did not change. Then the appellant was made to dip his fingers of hand into the water mixture which turned light pink. This was sealed. The tainted currency notes were recovered from the left front pocket of shirt of the appellant and their numbers noted, which tallied with the numbers mentioned in the memo prepared in the presence of independent witnesses. The recovered currency was taken in possession. Another sum of Rs.1050/- and an identity card etc. were recovered from the personal search of the appellant. Another glass of water was arranged and similar procedure for adding washing soda was poured in the glass. Then pocket of the shirt of the appellant was dipped in the same when its colour turned pink. This mixture was also sealed. The shirt worn by the appellant was taken in possession in the presence of independent witness, who was also entrusted with the seal. On completion of investigation, challan was presented and the appellant was prosecuted for the offences, as already noted.

In support of its case, the prosecution examined nine witnesses. All the incriminating circumstances appearing in evidence were put to the appellant and he refuted the allegations of prosecution, claiming his false implication. He, however, admitted that complainant Lal Singh had applied for an electric connection. As

per the stand of the appellant, the meter was first required to be tested from a laboratory at Patiala and upon receipt of a report, the respective meter is sent to concerned sub-division. The appellant claims that meter No.4000524 was sent by laboratory for installation at the premises of Lal Singh complainant. He has further brought out that this meter was handed over to Labh Singh Assistant Lineman and Parkash Chand Lineman on 24.7.2001 for being installed in the premises of the complainant. As per the appellant, the complainant refused to get the meter installed saying that electric meter provided by him bore No.4000526 and accordingly the electric meter sent by the appellant was kept at his house. Appellant has stated that in fact he could see from the record that meter No.4000526 was sent to the office of P.S.E.B. from laboratory on 3.7.2001 for installation at the house of one Nursi Singh and was so installed by one Sudagar Singh, an official of the P.S.E.B. The appellant accordingly claims that there was no occasion for him on 24.7.2001 to contact complainant or to demand any money from him. He has also referred to an application filed by the complainant that the meter, to be installed at his premises, in fact was not purchased by him (complainant). In support of his stand, he has also examined defence witnesses, like Ashpal Singh SDC to prove entry in the EME (Measurements) Register, Labh Singh, Assistant Lineman, Kuldeep Singh to show that the complainant was involved in some FIR case and Rakesh Suri to prove that the meter No.4000526 was issued to Nursi Singh. He has accordingly pleaded his false implication.

Mr.Ashit Malik, the counsel appearing for the appellant would say that the defence as projected by the appellant is more

probable and as such should be accepted. To further strengthen his argument, the counsel has stated that there was no occasion for the appellant to demand bribe from the complainant as the meter was never refused and in fact had even reached the residence of the complainant. It is the complainant, who in fact had refused to get the meter installed on the ground that the one purchased by him was carrying different number. According to the appellant, the case set up by the complainant, as such, would not inspire confidence as there was no occasion for the appellant to demand bribe in the facts and circumstances of the case, as mentioned.

On the other hand, State counsel has contended that the case has been established against the appellant by cogent evidence, which is receiving all round support from various witnesses and hence conviction and the sentence awarded to the appellant is required to be up-held.

It is not disputed that the case of the prosecution is supported by the evidence given by the complainant. His version would receive whole-hearted support from the shadow witness Kala Singh (PW-7) as well as DSP Narinder Pal Kaushal, the Investigating Officer (PW-9). It is established on record that process of trap was initiated. It also cannot be denied that the complainant had applied for getting an electric connection and meter was to be installed at his residence. The fact that the complainant had contacted the appellant is also not denied. All these aspects, coupled with the recovery of tainted money from the pocket of the appellant, turning of the solution to pink on account of the dipping of the fingers of the appellant as well as pocket of the shirt would indicate that tainted money had

indeed been accepted by the appellant and put it into the pocket. The numbers of the currency notes mentioned in the memo tallied with the numbers of the currency recovered. The submission made on behalf of the appellant that there was no occasion for him to demand bribe is negated from the evidence on record. The evidence would show that there was cutting on the entry showing issue of electric meter No.4000524 sent to the house of the complainant, wherein, in the last number was found over written as figure six. This appears to have been done to create a defence. It is also not disputed that the appellant was working as a Junior Engineer. Innocent consumers cannot be expected to know the internal functioning of the office at the P.S.E.B. Consumer generally would contact either Junior Engineer or S.D.O. for getting electric connection or meter installed at his residence. There is not much dispute on this fact that the complainant did contact the appellant in his capacity as Junior Engineer. Accordingly, the assertion made on behalf of the appellant that there was no occasion for him to demand money, would not be enough to negate the positive evidence produced on record showing demand of payment of gratification through number of witnesses, who are independent. The submission by the counsel for the appellant that Kala Singh shadow witness was co-villager of the complainant would not be enough to dislodge his independent character. Obviously some body known to the complainant would agree to be a shadow witness and not some, who is totally a stranger.

Mr.Malik has laid much emphasis on the plea that case of defence is more plausible and should be believed discarding the

prosecution version. In support of his submission, he has drawn my attention to the case of ***Ganga Kumar Srivastava Versus The State of Bihar, JT 2005(6) 356.*** This was a case where trap was laid and currency notes of Rs.150/- were recovered from the bushshirt of the accused. Conviction in this case was set-aside on the ground that the prosecution evidence did not inspire confidence. The court found that the defence evidence that the complainant and the witnesses came to the house of the accused, sat in the room where his bushshirt was hanging and that the currency were put in the pocket of the bushshirt in the absence of the accused leading to their recovery, was found to be more probable. The ratio of this case, in my view, would not apply to the facts of the present case. There is no such assertion made that tainted money was put in the pocket of the appellant in some surreptitious manner. Moreover, in the case of ***Ganga Kumar Srivastava (supra),*** the currency notes had not been treated with phenolphthalein powder. Under these circumstances and having regard to some other peculiar features, the defence version was considered more probable. The counsel has also referred to the state of ***State of Punjab Versus Kushal Singh Pathania, 2004(4) R.C.R.(Criminal) 498.*** In this case, accused was acquitted on the following grounds:-

(1) Independent witness deposed that accused was not accepting the tainted money and money was being put in pocket of his shirt.

(2) Complaint was made out of frustration as a fine of Rs.52,000/- was imposed for violation of energy

consumption circulars.

(3) Complainant not found to be creditworthy. Complaints were also lodged against other officers previously.

(4) PW who gave the signal to police was not a shadow witness.

(5) Police Officer who conducted the search did not offer himself for search."

None of the grounds would arise for consideration in the present case. The submission that shadow witness was stranger to the accused and that he would not have accepted money in the presence of a stranger to acquit the accused as done in the case of ***Prithi Pal Singh Versus The State of Punjab***, ***1991(1) R.C.R. (Criminal) 694***, cannot be accepted. This was so done in the case referred due to the facts and circumstances of that case. In fact what weighed with the court in the case of ***Prithi Pal Singh (supra)***, was the circumstance, wherein shadow witness left the place to bring the raiding party and the story projected by the prosecution that the accused kept holding currency notes in his hands till the police raided, was not believed for justifiable reasons. No such consideration would arise in the present case. Referring to the case of ***Ranjit Singh Versus The State of Punjab,*** *2003 (4) R.C.R.(Criminal) 496,* the counsel would say that doubting the demand and acceptance of bribe, the conviction was set-aside in this case, though the tainted money was recovered from the accused. This court did observe in the said case that evidence of traps is always nearly perfect, they being well planned and rehearsed and as such despite recovery of the money, the

conviction was set-aside by noting that demand and acceptance was doubtful. There is no allegation in the present case about the demand and acceptance being in doubt. In fact in that case, this court was to notice that the evidence should be specific with regard to the important ingredients of the offence, like demand of bribe, acceptance thereof and recovery of the tainted money from the possession of the accused. All these factors are established in the present case as can be seen from the evidence of the prosecution. The reason for demand on the part of the appellant is clearly made out. The acceptance is proved by the evidence of shadow witness and the complainant. The recovery is proved by the evidence led by the prosecution. It is then contended that trap witnesses are interested witnesses, they being concerned with the success of the trap, their testimony is thus qualitatively inferior to an ordinary interested witness. Even if it be so, the evidence of a particular witness cannot be discarded from consideration merely on the ground that a witness is an interested witness. What is required in such cases is to scrutinise the evidence of interested witness with care and caution. Nothing specific is pointed out to say that the evidence of the shadow witness or any other witness concerned with the trap is required to be discarded on the ground that they are interested witnesses. Their evidence has received sufficient corroboration from the independent evidence relating to recovery. Accordingly, there is nothing which goes to cast doubt on the story projected by the prosecution. This is not a case where two views of evidence are possible. The assertion of the counsel that the prosecution has not proved its case beyond reasonable doubt on the

theory of possibility of two views, does not seem to arise in this case. I do not find any merit in this appeal and the same is accordingly dismissed.

Considering the nature of allegations made and the fact that appellant is convicted for an offence under the Prevention of Corruption Act, which is a menace in the society, no leniency in the sentence is called for. The sentence awarded to the appellant is accordingly maintained. The appellant appears to be on bail. He is accordingly directed to surrender before the Chief Judicial Magistrate, Patiala to undergo the remaining portion of the sentence awarded to him.

May 08, 2007 (RANJIT SINGH)
ramesh JUDGE